

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

OFFICE OF THE CLERK

BRIAN P. DEER,

Plaintiff,

vs.

VALMONT INDUSTRIES, INC., and
VALMONT COATING, a Division of
VALMONT INDUSTRIES, INC.,

Defendants.

CASE NO. 8:05cv146

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441. *et seq.*, the Defendant, Valmont Industries, Inc., and Valmont Coating, a Division of Valmont Industries, Inc. ("Valmont Industries"), files this, its Notice of Removal, and states:

1. At all times material hereto, Valmont Industries, Inc. was a corporation organized and existing pursuant to the laws of the State of Delaware, with its principal place of business in Omaha, NE. Valmont Coating is a division of Valmont Industries, Inc. and is not a separate corporate entity.
2. On March 9, 2005, Plaintiff, Brian P. Deer, commenced a civil action against the Defendant, Valmont Industries, in the District Court of Douglas County, Nebraska, captioned Brian P. Deer v. Valmont Industries, Inc. and Valmont Coating, a division of Valmont Industries, Inc.
3. A copy of the Complaint and Summons were served on the Defendant on or about March 14, 2004, and are attached hereto as Exhibit A.
4. The above-described action is a civil action alleging racial harassment and retaliation. The statutes allege to have been violated include the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. 48-1101 *et seq.* and Title VII of the Civil Rights Act of 1964, as amended. 42 U.S.C. § 2000e, *et seq.*
5. Pursuant to the provisions of 42 U.S.C. § 2000e-5(f)(3), this Court has original jurisdiction over claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* Accordingly, this matter is properly removable to this Court pursuant to 28 U.S.C. § 1441(b) and (c).
6. Simultaneous with the filing of this Notice of Removal, Defendant has notified the District Court of Douglas County, Nebraska of the removal of this action and a copy of the Notice of filing of Notice of Removal is attached as Exhibit B. No other process, pleading, or orders have been served or filed herein.

WHEREFORE, Defendant requests that the above-entitled action now pending against it in the District Court of Douglas County, Nebraska, be removed to this court for trial in Omaha.

Dated this 4th day of April, 2005.

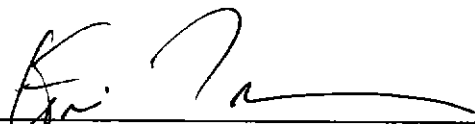
VALMONT INDUSTRIES, INC., and VALMONT
COATING, a Division of Valmont Industries, Inc.,
Defendants.

By: 
Eric W. Tiritilli, NE #22727
McGrath North Mullin & Kratz, PC LLO
Suite 3700 First National Tower
1601 Dodge St.
Omaha, Nebraska 68102
(402) 341-3070
(402) 341-0216 fax
etiritilli@mnmk.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following listed below by United States mail, postage prepaid, this 4th day of April 2005.

John K. Green
Pickens, Downman, Green & Gleason
LLP
444 Regency Parkway Drive, Suite 100
Omaha, NE 68114


Eric W. Tiritilli

MAR 09 2005

IN THE DISTRICT COURT FOR DOUGLAS COUNTY, NEBRASKA

BRIAN P. DEER,

Plaintiff,

vs.

VALMONT INDUSTRIES, INC &
VALMONT COATING, a Division of
Valmont Industries, Inc.,

Defendants.

DOC 1047 NO. 645

PETITION

Assigned to Judge

Randall

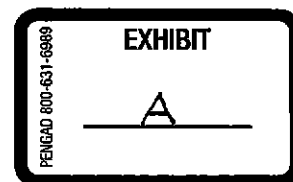
COMES NOW the Plaintiff and for his cause of action against the Defendants alleges and states as follows:

1. That at all relevant times until he was terminated, Plaintiff was employed by Valmont Coating, a division of Valmont Industries, Inc., in Valley, Nebraska.
2. That Defendant, Valmont Industries Inc., is a Delaware Corporation with its company headquarters in Omaha, Nebraska, and that Valmont Coating is a division within Valmont Industries, Inc.

First Cause of Action

(Hostile Work Environment)

3. That throughout the course of his employment with Defendant, Plaintiff's job performance was satisfactory.
4. That Plaintiff is an African-American male and a member of a suspect class.
5. That after being subjected to racially discriminatory comments and treatment by his co-workers, Plaintiff made formal discrimination complaints.



6. That after Plaintiff complained to Defendant about the discriminatory comments and hostile work environment, Defendant investigated the matter, but took no action and did not proceed with disciplinary matters.

Second Cause of Action

(Retaliation)

7. That in retaliation for his making complaints of racially discriminatory comments, Defendant took adverse employment actions against Plaintiff by transferring Plaintiff to a different position, attempting to transfer Plaintiff to a lesser paying position, and ultimately by terminating Plaintiff's employment.
8. That the adverse employment action Plaintiff suffered at the hands of Defendants was causally and temporally related to, and in retaliation for, Plaintiff engaging in the protected activity of complaining of discriminatory treatment.
9. That Defendants' retaliatory termination of Plaintiff was in violation of Title VII of the Federal Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. § 48-1101 *et seq.*
10. That Plaintiff filed a timely complaint of discrimination and retaliation with the Nebraska Equal Opportunities Commission (NEOC).
11. That Plaintiff filed the present action within ninety days after receiving notice of the NEOC's determination to close Plaintiff's charge, and such determination is attached.

WHEREFORE, Plaintiff prays for the Court to enter judgment against the Defendants for damages in an amount yet to be determined which includes all measures of

damages available under the relevant Nebraska and federal statutes, for reasonable attorney's fees, pre-judgment interest, and for all further relief as the Court deems appropriate.

BRIAN P. DEER, Plaintiff

By: 

JOHN K. GREEN, #11581

Pickens, Daubmen, Green & Gleason, LLP

Lake Regency Building, Suite 100

444 Regency Parkway Drive

Omaha, NE 68114

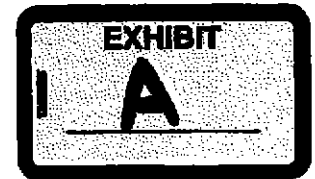
(402) 393-7400

NEBRASKA EQUAL OPPORTUNITY COMMISSION

ALFONZA WHITAKI
DIRECTOR

BEFORE THE NEBRASKA EQUAL OPPORTUNITY COMMISSION

COMMISSION DETERMINATION



DEC 09 2004

For the Commission

1313 Fairway on-the-Mall
Omaha, Nebraska 68102-1836
Telephone (402) 595-2028
Fax: (402) 595-1205

NEB 2-03/04-4-33990-R

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ATTACHMENT

No Reasonable Cause: Race/Color (harassment; hostile work environment)

The evidence shows that although some of Complainant's co-workers made racially discriminatory comments, once Complainant informed co-workers that he found the comments offensive, the comments ceased. In addition, Complainant refused to provide Respondent specifics with regard to the incidents when he initially complained of discrimination; however, once Respondent became aware of the specifics, Respondent investigated the incidents and took appropriate action in a timely manner from the time Respondent received the specifics.

No Reasonable Cause: Retaliation (termination)

The evidence shows that Complainant was not terminated in retaliation for making complaints of racially discriminatory comments but rather because of his lack of acceptable performance. The evidence shows that from Complainant's initial transfer to a new position, he had difficulty performing in a manner that was acceptable to Respondent. Complainant was made aware of his performance deficiencies, but did not improve his performance. Complainant was given an opportunity to move to another position, but was reluctant to move because he did not want to take a reduction in pay. Complainant's comparator mastered the Shipper A position, but had trouble progressing to the Shipper B position, and eventually posted for and received a lesser paying position.

IN THE DISTRICT COURT, DOUGLAS COUNTY, NEBRASKA

Brian P. Deer

vs.

Valmont Industries, Inc. & Valmont Coating,
A Division of Valmont Industries, Inc.

SUMMONS BY CERTIFIED MAIL

DOC. 1047 NO. 645

STATE OF NEBRASKA)
COUNTY OF DOUGLAS)

This is to notify Valmont Industries, Inc. & Valmont Coating,
A Division of Valmont Industries, Inc.

Defendant that you have been sued by Brian P. Deer

Plaintiff in the District Court of said County, and that in order to defend the lawsuit you must file an appropriate written response on or before thirty days after service of Summons and Complaint, in answer to the Complaint said Plaintiff filed against you in the Office of the Clerk of said Court or such Complaint will be taken as true and judgment entered accordingly for the relief demanded in the attached Complaint.

RETURN of this Summons is due within ten days after return of the signed receipt.

WITNESS my signature and the Seal of said Court at Omaha and issued this 9th day of March, 2005.

RUDY J. TESAR, CLERK

BY: Julie Joral
Deputy

ATTORNEY FOR PLAINTIFF:

NAME: John K. Green
ADDRESS: PICKENS, DAUBMEN, GREEN & GLEASON, LLP
444 Regency Parkway Drive, Suite 100
Omaha, Nebraska 68114
PHONE: (402) 393-7400